

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #15	CCRB Case #: 201608154	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 09/22/2016 3:50 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 73	18 Mo. SOL 3/22/2018	EO SOL 3/22/2018	
Date/Time CV Reported Thu, 09/22/2016 4:33 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 09/22/2016 4:33 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Furegno	12784	934891	073 PCT
2. POM Henry Rivera	03959	940639	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Furegno	Abuse: Police Officer Christopher Furegno stopped § 87(2)(b)	§ 87(2)(b)
B.POM Henry Rivera	Abuse: Police Officer Henry Rivera stopped § 87(2)(b)	§ 87(2)(b)
C.POM Christophe Furegno	Abuse: Police Officer Christopher Furegno frisked § 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

### Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the on-line website on September 22, 2016.

On September 22, 2016 at approximately 3:50pm, § 87(2)(b) was walking towards § 87(2)(b) in Brooklyn when he was stopped by Police Officer Christopher Furegno and Police Officer Henry Rivera of the 73<sup>rd</sup> Precinct (**Allegations A and B**). § 87(2)(b) asked the officers why they were stopping him, to which they responded that they had received a call fitting his description and that he was interfering with their investigation. PO Furegno asked § 87(2)(b) for his identification and if he knew anything about drugs in the area. PO Furegno then frisked § 87(2)(b) (**Allegation C**). § 87(2)(b) was then released without being issued a summons.

Video footage was obtained from § 87(2)(b) in Brooklyn, however nothing regarding this incident is depicted in the video.

This case went past 90 days due to both officers missing multiple scheduled interviews at the CCRB.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation during his sworn statement, § 87(2)(b).
- FOIL requests were filed on October 12, 2016 and December 16, 2016. The results of each indicate that no notices of claim have been filed (BR 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- § 87(2)(b) has three prior complaints with the CCRB. § 87(2)(b)

- During his 12 year tenure, PO Furegno has been the subject of one prior CCRB allegation, which was truncated.
- During his 10 year tenure, PO Rivera has been the subject of 11 prior CCRB complaints involving six cases. One allegation was substantiated: Case #201602547 (Abuse-Frisk). For this substantiated allegation, the Board recommended formalized training. As of the date of this report, the NYPD has not issued its disposition.

### **Potential Issues**

- During his sworn statement, provided on October 5, 2016, § 87(2)(b) stated that when the officers stopped him, a § 87(2)(b) was walking in front of him. § 87(2)(b) was not sure what, if anything, § 87(2)(b) saw but believed he could have seen the beginning of the interaction. § 87(2)(b) provided § 87(2)(b) phone number and mailing address. Between October 17, 2016 and October 25, 2016, four calls were placed to the phone number § 87(2)(b) provided. On October 25, 2016, a call was received from the phone number stating that it did not belong to a § 87(2)(b). On October 17, 2016 and October 26, 2016, Please Call letters were mailed to the address § 87(2)(b) provided for § 87(2)(b). Because contact was never made with § 87(2)(b) no statement was ever obtained.

### **Findings and Recommendations**

#### **Allegation A –Abuse of Authority: Police Officer Christopher Furegno stopped § 87(2)(b)**

#### **Allegation B –Abuse of Authority: Police Officer Henry Rivera stopped § 87(2)(b)**

It is undisputed that PO Rivera and PO Furegno stopped § 87(2)(b) § 87(2)(g)

§ 87(2)(b) testified that after walking around the immediate area for approximately 20 to 30 minutes, he was going to his home at § 87(2)(b). As he approached § 87(2)(b) an unmarked police vehicle pulled to the curb behind him and PO Furegno and PO Rivera exited. PO Furegno told § 87(2)(b) to come over to him. § 87(2)(b) asked the officers why they were stopping him. PO Furegno responded that they had gotten a report that fit his description, to which § 87(2)(b) requested to hear the description. PO Rivera then stated that § 87(2)(b) was turning and looking at them while he was walking and that he was obstructing their investigation. During the interaction, § 87(2)(b) was asked for and provided his identification. He did not allege being asked any questions regarding drugs. He also did not state that either officer mentioned jaywalking. Prior to being released, PO Furegno asked PO Rivera if § 87(2)(b) was a part of the investigation, to which PO Rivera stated he was not (BR 03).

PO Furegno testified that PO Rivera and he were in the area conducting an investigation in to § 87(2)(b) which was identified as a place of interest based on a number of drug overdoses as well as information obtained from perps. Their stakeout lasted approximately 30 to 60 minutes, during which they were both static and moving. During their stakeout, PO Furegno observed § 87(2)(b) walk down § 87(2)(b) a couple times. PO Furegno could not state how many times, but confirmed it was more than once. PO Furegno did not observe § 87(2)(b) interact with anyone nor was he walking with anyone (BR 04).

PO Furegno stated that he observed § 87(2)(b) jaywalk across Hull Street, near the intersection of Hull Street and Stone Street. PO Furegno stated that he jaywalked diagonally, outside of the cross walk. The officers followed § 87(2)(b) on Stone Street towards § 87(2)(b), during which time § 87(2)(b) looked back in their direction at least three times. After § 87(2)(b) turned right onto § 87(2)(b) PO Rivera parked the vehicle near the curb behind him and PO Furegno told him to stop.

During the stop, PO Furegno stated that he initially spoke to § 87(2)(b) about jaywalking infraction. PO Furegno then asked § 87(2)(b) if he knew anything about a drug problem in the neighborhood, which § 87(2)(b) stated he did not. PO Furegno stated that he asked for § 87(2)(b)'s identification but did not believe he ever obtained it. PO Furegno testified that the intention of the stop was to speak to § 87(2)(b) about the jaywalking infraction, as well as his "loitering" in a drug prone area and inquire about any information § 87(2)(b) could provide regarding drugs.

PO Rivera also testified that they were investigating § 87(2)(b) § 87(2)(g). PO Rivera stated that while driving around the area for approximately 45 minutes, he observed § 87(2)(b) outside a building on Somers Street. He stated that § 87(2)(b) was alone outside the location and that he could not tell if § 87(2)(b) was loitering because he only saw § 87(2)(b) as he drove by (BR 05).

After parking their vehicle near the intersection of Stone Street and Somers Street, PO Rivera observed § 87(2)(b) jaywalking across the intersection in the direction of their vehicle. § 87(2)(b) appeared to observe the officers in their vehicle, stopped in the middle of the intersection, turned around, and began walking on Stone Street towards § 87(2)(b). PO Rivera drove in the direction § 87(2)(b) was walking in. As he was walking away, § 87(2)(b) looked back in the officers direction twice. PO Rivera stopped their vehicle on § 87(2)(b) and PO Furegno exited and initiated contact with § 87(2)(b).

PO Rivera stated that after stopping § 87(2)(b) PO Furegno asked for his ID. § 87(2)(b) was upset at being stopped. PO Rivera stated that they tried to calm down § 87(2)(b) verbally. They informed him that they had cause to stop him. PO Rivera testified that they, "didn't want to tell him the truth because we are investigating something and didn't want to give that away." When asked to clarify what he meant by "truth," PO Rivera stated he meant their suspicion of him and the area. During his statement, PO Rivera initially stated that he did not recall if the officers mentioned the jaywalking infraction to § 87(2)(b). He later stated that at the end of the stop, PO Furegno warned and admonished § 87(2)(b) for jaywalking. PO Rivera stated that though he was within earshot of PO Furegno, during the entire interaction, he could not recall what questions PO Furegno asked § 87(2)(b). He stated that the nature of the questions were to find out if § 87(2)(b) lived in the area and what his identifying information was. He stated that there were no questions asked pertaining directly to § 87(2)(b) or their investigation. PO Rivera stated that the intention of the stop was to issue a summons for jaywalking as well as to obtain information that could be useful for their investigation.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation C –Abuse of Authority: Police Officer Christopher Furegno frisked** § 87(2)(b)

It is undisputed that PO Furegno frisked § 87(2)(b) after stopping him. § 87(2)(g)

§ 87(2)(b) testified that after providing his identification to PO Furegno, PO Furegno instructed him to put his hands up. § 87(2)(b) complied and PO Furegno patted down § 87(2)(b)'s front pants pockets, buttocks, rear pants pockets, and finally his genital area (BR 03).

PO Furegno testified that after stopping § 87(2)(b) and talking to him for a short period, § 87(2)(b) was getting, “overly excited.” PO Furegno stated that while they were talking, § 87(2)(b) was approximately three or four feet away from him. He stated that § 87(2)(b) was moving around but could not articulate specifically what he was doing. He stated that he could not recall if § 87(2)(b) stepped towards him at any point. PO Furegno testified that § 87(2)(b)'s tone was getting louder (BR 04).

PO Furegno testified that he stepped forward towards § 87(2)(b) and patted him down. PO Furegno could not recall the exact areas or order of his pat down of § 87(2)(b). PO Furegno stated that the frisk lasted approximately 10 seconds.

When asked if he suspected § 87(2)(b) of possessing a weapon, PO Furegno stated that he assumes a civilian has a weapon whenever they get “excited or rambunctious.” PO Furegno stated that he did not observe any bulges on § 87(2)(b)'s person. He further stated that he did not observe anything suspicious on § 87(2)(b)'s person. PO Furegno did not recall § 87(2)(b) doing anything with his hands.

PO Rivera testified that he observed PO Furegno pat down § 87(2)(b)'s waistline. He could not recall if PO Furegno patted down any other areas. PO Rivera stated that he believed it was possible that § 87(2)(b) was in possession of a weapon. He stated that his suspicion was based on § 87(2)(b) being defensive and rude verbally and that he was moving in place. PO Rivera stated that he did not observe any bulges on § 87(2)(b)'s person. PO Furegno did not inform PO Rivera

that he suspected § 87(2)(b) possessed a weapon. Nor did they communicate at all about their observations while § 87(2)(b) was stopped (BR 05).

A frisk requires reasonable suspicion that an individual is in possession of a weapon. People v. DeBour, 40 N.Y.2d 210 (1976)(BR 06).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g), § 87(4-b)  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: 15

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date